

**DECISION**

*Szpremeta*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

27207

**FILE:** B-211350

**DATE:** January 16, 1984

**MATTER OF:** MediAx Associates, Inc.

**DIGEST:**

Protest alleging that work covered by contract modification (which was transferred from protester's terminated for convenience contract) exceeded scope of initial competition will not be considered since circumstances justified sole-source procurement because agency knew of only one source which could reasonably be expected to deliver required services timely.

MediAx Associates, Inc. (MediAx), protests the Department of Health and Human Services' (HHS) modification of contract No. 105-81-008 awarded to the University of Arizona.

Originally, four contracts were awarded by HHS to test the effects of the Head Start program on children. However, in March 1982, due to escalating costs, HHS redirected the scope of the project and only contracts with the University of Arizona and MediAx were continued. Under the revised cost-plus-fixed-fee contracts, the University of Arizona was responsible for developing and refining cognitive measures, training MediAx to apply the measures, monitoring tests and analyzing the data. MediAx was responsible for administering the measures and collecting the data.

On April 8, 1983, MediAx's contract was terminated for the convenience of the government for the following reasons:

"In September 1982, \$910,652.00 was added to MediAx's contract to carry the contract through to completion with the understanding that no additional funds would be required (\$716,242.00 of this amount was for an overrun).

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"By April 1983, Mediatrix had presented the Government with a series of contractual problems, a number of cost overruns and embarrassing and disruptive actions obstructing the Government's efforts to satisfactorily complete the work. Mediatrix had spent approximately \$3.4 million, had not completed the project and was requesting an additional \$486,000 for completion. Further, the Government had lost confidence in Mediatrix's ability to accomplish the tasks of the contract."

Subsequently, HHS, on April 13, modified the University of Arizona's contract and transferred the responsibility for the spring testing and data collection effort from Mediatrix to the University of Arizona.

Mediatrix argues that this modification exceeded the scope of the University of Arizona's existing contract, that Mediatrix should not have been terminated, that it should have been considered for the transferred work and, in any event, the modification work should have been the subject of a competitive procurement. HHS contends that the modification was within the scope of the competition that was initially conducted and that, irrespective of this, the circumstances justified a sole-source award to the University of Arizona for these services.

We deny the protest. We agree with HHS that a sole-source award was justified. Accordingly, we need not address the issue of whether the modification exceeded the scope of the University of Arizona's contract.

Initially, we note that Mediatrix disputes the justifications advanced by HHS in deciding to terminate Mediatrix's contract. As a general matter, our Office does not review an agency's decision to terminate a contract for the convenience of the government since this is appropriately a matter for the Board of Contract Appeals. The only exception is when the contracting agency's action is based upon a determination that the terminated contract was improperly awarded. Foto Typesetters, Inc., B-210439, January 17, 1983, 83-1 CPD 53. This exception is not applicable in the present case and, consequently, we will not review HHS's decision to terminate Mediatrix's contract.

With regard to Mediatrix's remaining contentions we have held that a sole-source procurement is justified where the government's minimum needs can be satisfied by only one firm which could reasonably be expected to make timely delivery. Diversified Computer Consultants, B-205820, July 13, 1982, 82-2 CPD 47.

HHS indicates that in order to protect the scientific integrity of the results, it was essential that the spring test be administered in conditions approximating those that were used in the fall testing and that a statistically significant sample of children previously tested be retested. HHS estimates that a new contractor would have required a minimum of 2, but more likely 3, months following the contract award to develop the required knowledge of the tests and processes that were used in the fall testing. In addition, HHS indicates that a competitive procurement, even on an expedited basis, would have required at least 2-3 months from development of the request for proposals to the award of a new contract. Since virtually all of the Head Start program sites closed in May or early June and since HHS estimates that between 5 and 6 weeks are required to administer the tests, a delay beyond the second week of April would have been untenable. The agency argues that in order to meet this timeframe, a competitive procurement would have had to begin in November 1982. Because of the above, HHS asserts that insufficient time existed within which to conduct a competitive procurement. HHS also indicates that based on the contractual problems with Mediatrix including the firm's request for additional funds to complete its contract, and the above-stated urgency, it had no reason to believe that Mediatrix could have completed the work within the required timeframe.

We think that HHS's actions were justified. Between April 8, 1983, the date HHS terminated Mediatrix's contract, and April 13, 1983, the date that the modification to the University of Arizona's contract was executed, HHS had a reasonable basis to determine that only the University of Arizona had the ability to accomplish the required tasks within the specified timeframe. Given the urgent need to begin the testing within a short period of time, we are persuaded that insufficient time existed to conduct a competitive procurement. Moreover, given the short 5-day period between the termination and the modification, any

further consideration of Mediatrix in these circumstances would have been meaningless. Therefore, HHS had sufficient justification to award to the University of Arizona on a sole-source basis. See B-168992, October 1, 1970.

Accordingly, the protest is denied.

A handwritten signature in cursive script, reading "Milton F. Jordan".

Acting Comptroller General  
of the United States